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NOTES.

CARRIERS—CARMACK AMENDMENT—LIABILITY FOR DELAY—A decision which has been awaited with much interest and not a little speculation has recently been handed down by the Supreme Court of the United States. The question was: Does the Carmack Amendment [1] impose on the initial carrier liability for delay occur-

[1] Act of Feb. 4, 1887, c. 104, Sec. 20, 24 Stat. 386, U. S. Comp. St. 1901, p. 3169, as amended by Act of June 29, 1906; c. 3591, Sec. 7, 34 Stat. 593, U. S. Comp. St. Supp. 1911, p. 1307, which provides in part: "That any common carrier receiving property for transportation from a point in one state to a point in another state, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof *for any loss, damage or injury to such property caused by it* or by any common carrier . . . to which such property may be delivered or over whose line or lines such property may pass."

ring on the line of its connection, without physical damage to the property?

It was presented upon the following facts. A carload of strawberries was delivered by the shipper to a railroad company for transportation from a point in Maryland to New York City. It arrived at the destination some hours later than the customary time of arrival, the price of berries having fallen in the meantime. The defendant was sued as the initial carrier under the Carmack Amendment for the loss in price sustained and a verdict for the plaintiff was upheld by the Court of Appeals of Maryland.[2] On appeal to the Supreme Court of the United States this decision was affirmed and it was held that the loss of value resulting from the delay in transit was within the purview of the provisions making the initial carrier liable "for loss, damage or injury to such property".[3]

The considerations which led to the adoption of the Carmack Amendment were specifically pointed out in *Atlantic Coast Line* v. *Riverside Mills*.[4] Along with the single rate and the continuity of carriage in through shipments, there had grown up the practice of limiting the liability of each separate company to its own part of the through route, and, as a result, the shipper could look to the initial carrier for recompense only for loss, damage, or delay occurring on its own line. This burdensome situation was the matter which Congress undertook to regulate. Often it was difficult to localize the cause of action and the shipper might be met with the defense that the loss, injury, or delay did not occur on the line of the carrier he had sued. The initial carrier who had a through route connection with the carrier on whose route the loss occurred, could arrange a settlement *inter se* very easily, while the shipper would be at heavy expense to sue a carrier thousands of miles away perhaps. Thus the amendment was designed to secure the rights of the shipper by securing "unity of transportation with unity of responsibility".[5]

It was argued on behalf of the defendant in the case in question that Congress had failed to accomplish this paramount object and that the statute did not reach the case of a failure to transport with reasonable despatch. It was contended that in such a case, although there is a through shipment, the shipper must still look to

[2] 122 Md. 215 (1914).

[3] N. Y. P. & N. R. Co. v. Peninsula Produce Exchange of Maryland, decided by the United States Supreme Court January 24, 1916. See also "The Legal Intelligencer," Vol. LXXIII, p. 82, February 4, 1916.

[4] 219 U. S. 186 (1911).

[5] The Md. Court (*supra*, note 2), said in part after pointing out the reasons for the passage of the amendment: "The reason and policy of the Act are sufficiently broad to include the liability here sought to be charged. The remedies of the shippers in respect to losses of value from delay of transportation were subject to the same diversities and inconveniences as were those relating to recovery for physical injury to the property accepted for carriage."

the particular carrier whose neglect caused the delay. But the court, speaking through Mr. Justice Hughes, said, "We do not think that the language of the Amendment has the inadequacy attributed to it. The words 'any loss, damage or injury to such property' caused by the initial carrier or by any connecting carrier are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to *any part of the transportation* to the agreed destination." And in answer to the contention that the only cases for which the statute provides are those in which the commodities themselves become damaged, that is, a physical damage, and that an impairment of value due to delay while it occasions a loss to the owner, does not produce any "loss, damage or injury *to the property,*" the court said, "It is not necessary, nor is it natural in view of the general purpose of the statute, to take the words 'to the property' as limiting the word 'damage' as well as the word 'injury' and thus as rendering the former wholly superfluous."

It was urged that the second paragraph of the amendment puts beyond question the proposition that the loss, damage or injury for which the initial carrier is made liable is loss, damage or injury *which is sustained on the line* of one of the carriers participating in the transportation;[6] that it was, therefore, loss, damage or injury which may be localized and definitely ascertained to have occurred while the property was in the possession of one or other of the carriers; that physical loss, damage or injury was contemplated. But the court in disposing of this argument properly said, "We find no difficulty in this, as the damages required to be paid by the initial carrier are manifestly regarded as resulting from some breach of duty, and the purpose is simply to provide for a recovery against the connecting carrier if the latter, as to its part of the transportation, is found to be guilty of that breach".[7]

It was said in *Adams Express Co.* v. *Croninger*:[8] "The consti-

[6] This paragraph reads as follows: "That the common carrier . . . issuing such receipt or bill of lading shall be entitled to recover from the common carrier . . . *on whose line the loss, damage or injury shall have been sustained,* the amount of such loss, damage or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof."

[7] Some state courts have passed upon this question and are not all in accord. In the following decisions state courts have held the Carmack Amendment applicable in cases of delay: Norfolk Truckers' Exchange v. N. S. Ry. Co., 116 Va. 466 (1914); Fort Smith, *etc.*, R. R. Co. v. Aubrey, 39 Okla. 270 (1913); Southern Pac. Co. v. Lyon, 66 So. 209 (Miss., 1914); M. K. & T. Ry. Co. v. Carpenter, 52 Tex. Civ. App. 585 (1908); Pecos, *etc.*, Ry. Co. v. Coxe, 150 S. W. 265 (Tex., 1912). On the other hand, in Gulf, *etc.*, Rwy. Co. v. Nelson, 139 S. W. 81 (Tex., 1911), and in Byers v. Southern Express Co., 165 N. C. 542 (1914), the amendment was held not to include delay.

[8] 226 U. S. 491 (1912).

tutional power of Congress to regulate commerce among the states and with foreign nations comprehends power to regulate contracts between the shipper and the carrier of an interstate shipment by defining the liability of the carrier for loss, *delay,* injury, or damage to such property." It might be argued that the use of the word "delay" indicates that the Supreme Court regarded that cause of loss as a separate and distinct ground of liability, and that, as it is not specifically mentioned in the Carmack Amendment, it should be held to be excluded from the remedy therein provided. But on the other hand it seems more logical to presume that the court by its use of the word intended to indicate its interpretation of the statute and that it did apply to cases of delay.

This is particularly so in view of the Act of 1914.[9] The court in referring to that act said, "If the language of section twenty [10] can be regarded as ambiguous, this legislative interpretation of it as conferring a right of action for delay, as well as for loss or injury to the property in the course of transportation is entitled to great weight.[11] It was argued that the Act of 1914 is not substantive but jurisdictional and cannot enlarge the substantive provisions of the Carmack Amendment. This is untenable because the act specifically refers to the Carmack Amendment and undoubtedly assumes that cases of delay come within the purpose of the act. It does not enlarge the scope of the Carmack Amendment, but merely intimates what the proper construction should be.

In view of the primary purpose of the act, it is submitted that the Supreme Court has properly construed the words "loss, damage, or injury to the property" as broad enough to cover a case of damage to the shipper or owner by reason of delay. It would be a narrow construction of the statute to confine its operation to the actual loss of goods, or to their physical injury. As said in a Virginia case,[12] "The wrong for which the statute undertook to give a remedy was that done to the shipper, and if the shipper has suffered loss by reason of the negligent or unreasonable delay of the carrier in the performance of its contract, it is just the same as though the loss had resulted from a physical injury to the goods or from the actual loss or disappearance of specific articles."

The effect of the principal case is obviously to overrule con-

[9] Act of January 20, 1914, c. 11, 38 Stat. 278, which provides, "that no suit brought in any state court of competent jurisdiction against a railroad company . . . to recover damages for *delay,* loss of or injury to property received for transportation by such common carrier under Sec. 20 of the act to regulate commerce . . . shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of $3000."

[10] The Carmack Amendment.

[11] The court here cites Alexander v. Mayor, 5 Cranch 1 (U. S. 1809), and Cope v. Cope, 137 U. S. 682 (1891).

[12] Norfolk Truckers' Ex. v. Norfolk Co., *supra,* note 7.

trary decisions which have prevailed in some instances in the state courts and to establish a uniform rule in suits under the Carmack Amendment, for delay in interstate shipments.[18]

L. W.

CONSTITUTIONAL LAW—THE CONSTITUTIONALITY OF THE FEDERAL INCOME TAX OF 1913[1]—The opinion of the Supreme Court of the United States recently handed down in *Brushaber* v. *Union Pacific Railroad Co.*,[2] in upholding the validity of the most recent income tax law under the Sixteenth Amendment, marks the termination of long-continued attempts on the part of Congress to bring within the taxing power of the United States the productive field of private incomes, with the final triumph of such Congressional legislation. In view of the general public importance of the present act, a brief review of its predecessors and the constitutional obstacles encountered by them is perhaps not inappropriate.

The income tax is of ancient origin[3] and was discussed early in the constitutional history of the United States. In 1812 a proposed tax on incomes was rendered unnecessary by the early termination of the war with England.[4] In 1861 a tax upon all incomes in excess of eight hundred dollars was imposed by the Direct Property Tax Act[5] which apparently was never collected and was repealed a year later by the Act of 1862[6] which imposed a graduated tax with a minimum exemption of six hundred dollars. By the Act of 1864[7] the rate of taxation was increased, and in 1865[8] an act was passed amending the Act of 1864. By the Act of 1867[9] the progressive tax was repealed and a tax of five per cent. on the excess of incomes over one thousand dollars until 1870 was imposed. In 1870 the tax was reduced for one year and upon its expiration, in 1871, it was not re-enacted.

For nearly twenty-five years thereafter there was no further legislation on the subject. It remained for the Act of 1894[10] to

[18] For a discussion of the principal case when first decided by the Maryland Court of Appeals, see 62 UNIV. OF PENNA. L. REV., 727 (1914).

[1] Act of Oct. 3, 1913 (Sec. II, Ch. 16; 38 Stat. at L., 166).

[2] Decided Jan. 24, 1916.

[3] There is evidence that such taxes existed as early as 1580 B. C. For a discussion of the early history of income taxes with authorities, see Foster's "Income Tax," 2 ed. (1915), Sec. 1.

[4] Seligman, Income Tax, 430.

[5] Act of Aug. 5, 1861, 12 Stat. at L., Chap. 45, p. 309, Sec. 49-51.

[6] Act of July 1, 1862; 12 Stat. at L., Ch. 119, p. 473, Sec. 89-93.

[7] Act of June 30, 1864; 13 Stat. at L., Ch. 173, p. 281; Sec. 116-123.

[8] Act of Mar. 3, 1865, 13 Stat. at L., Ch. 78, p. 479, Sec. 1.

[9] Act of Mar. 2, 1867; 14 Stat. at L., Ch. 169, p. 477.

[10] Act of Aug. 27, 1894; 28 Stat. at L., Ch. 349, p. 509.